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APR 6 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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April 6, 2001

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary - Room TWB-204
445 Twelfth Street, SW
Washington, DC 20554

ORIGINAL

Ex Parte: CC Docket Nos. 94-129 and 00-257

Dear Ms. Salas:

On April 5, 2001, Mary Brown and I from WorldCom, Inc. met with Michele Walters, Dana Bradford, and Will Cox of the Commission's Common Carrier Bureau regarding the proposed rulemaking, currently pending in the above-referenced dockets, to implement expedited procedures for handling the sale or transfer of subscribers bases. In addition to a general discussion on the comments submitted in response to the Commission's Notice, two issues in particular were addressed, namely subscriber transfers when preferred carrier freezes are involved and pro forma transfers of control.

As the Commission has noted, carriers typically seek waivers of its authorization and verification rules to effectuate the sale or transfer of a subscriber base. The Commission generally grants a waiver of its rules to the extent necessary to enable the purchasing carrier/transferee to become the preferred carrier of the subscriber currently presubscribed to the selling carrier/transferor without having to obtain individual subscriber authorization. Waivers include prior notice requirements that identify the new carrier, provide information about rates, and advise the customer of his or her continuing right to select a carrier of his or her choice.

In implementing the actual transfer of the customer, the industry has uniformly agreed that the grant of a waiver, which included the above-described obligations on the transferee to notify customers in advance, means that individual customer authorizations and verifications are not required before migrating a customer account to the transferee. Further, the industry has near uniform agreement that a Commission-authorized waiver requires a local exchange carrier to override a "PIC freeze" that might be placed on any affected customer's account.

The forthcoming order on this docket is an opportunity to resolve any concerns that executing carriers might have about executing subscriber changes as part of a sale or transfer of a customer base. Clarity is needed. On December 8, 2000, the Bureau granted a waiver of its authorization and verification rules to the extent necessary to enable MCI WorldCom to become the preferred long distance carrier of the consumers currently presubscribed to Touch 1 Long Distance, Inc.

(Touch 1). SBC-Ameritech, however, claims that it needs an additional waiver for it to convert subscribers that have a PIC freeze on their account.

In WordCom's view, the Bureau's December Order requires Ameritech to transfer Touch 1's base to MCI WorldCom, as all the other local exchange carriers have done. Moreover, neither the transferor nor transferee should be held responsible for costs associated with the executing carrier's PIC freeze offering to its customers. But the question for the future, in the context of the proposed rules, is how should executing carriers know when they are free to process customer changes, and should PIC freezes be automatically overridden?

PIC freezes should be overridden because of the following:

- (1) The transferor is discontinuing service. Therefore, customers will lose service if not transferred.
- (2) Since interexchange carriers are not privy to PIC freeze information during the negotiating of a deal, it would be impossible to take PIC freezes into account in the negotiation process.
- (3) Customer will be provided advanced notice of the transfer. The Commission may consider, though it is unnecessary, having the advanced notice address the possibility of a freeze on the account. For example, the notice could include a statement that if there is a freeze on the account, such freeze will be overridden for the purposes of this transfer.

This leaves the question of how an executing carrier should conclude that it is free to implement a transfer. The Commission is already contemplating a requirement, as part of its proposed streamlining procedures, that acquiring carriers provide the Commission prior notification of the transfer. This official notification could also serve as the executing carrier's authority to override freezes and implement the transfers, without subscriber authorization. The acquiring carrier could provide a copy of the notice to all affected local exchange carriers.

WorldCom also notes that the record in this proceeding does not discuss how streamlined sales or transfers of customer bases will be handled in the context of pro forma transfers of control. Pro forma transfers of control is a term of art used in spectrum licensing to define when applicants can use very streamlined applications that transfer control of a license to another entity. The Commission routinely identifies these as follows:

- (1) Assignment from an individual or individuals (including partnerships) to a corporation owned or controlled by such individuals or partnerships without any substantial change in their relative interests;
- (2) Assignment from a corporation to its stockholders without effecting any substantial change in the disposition of their interests;
- (3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;
- (4) Corporate reorganization which involves no substantial change in the beneficial ownership of the corporation;
- (5) Assignment or transfer from a corporation to a wholly owned subsidiary thereof and vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without a substantial change in their interests; or

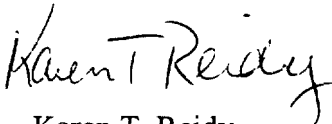
- (6) Assignment of less than a controlling interest in a partnership. *See*, Non-substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, 13 FCC Rcd 6293 (1998); *See also* 47 C.F.R. Section 63.24.

In WorldCom's view, the Commission should evaluate pro forma transfers from the perspective of the customer – does the assignment, transfer or reorganization, viewed from the customer's perspective, result in a perceived change in carrier, rates, CIC codes (necessitating a new calling card, for example)? Many pro forma transfers of control will not raise any such issues – a subsidiary carrier will just be moved to a different place in a corporate reorganization chart. In this case, the "transfer" is transparent to the customer. But some pro forma transfers will – a subsidiary company that gets rolled up into a parent entity, and that changes its name, has different rate plans, etc. In addition to pro forma transfers, there may also be instances where a company would like to transfer some part of a subsidiary's customer base (e.g., residential customers) by migrating those customers to another subsidiary in order to consolidate its residential base.

These various permutations of internal reorganizations make it difficult to decide, in advance, that the streamlined customer change rules should apply in any given case. Given that the acquiring entity must have some legal basis to request an executing carrier to move a customer base, it is in the acquiring entity's interest to provide the Commission with the requisite notice of the upcoming transfer and to undertake to satisfy the rules, whenever customers are being moved. For that reason, WorldCom suggests that the Commission simply acknowledge that its streamlined rules might apply to certain pro forma transfers, and state that its streamlined rules provide a safe harbor. In WorldCom's view, the acquiring entity has every reason to follow the rules, because this will ensure that the acquiring carrier has the requisite authority to order the executing carrier to migrate the customer base. In addition, if the acquiring carrier undertakes to follow the streamlined rules, it substantially reduces its risk of a subsequent adverse judgment that it violated the Commission's anti-slamming rules.

The attached was distributed at the meeting.

Sincerely,

A handwritten signature in black ink that reads "Karen T. Reidy". The signature is written in a cursive, flowing style.

Karen T. Reidy

Attachment

cc: M. Walters
D. Walton-Bradford
W. Cox

Pro Forma Transfer of Control

Used in spectrum licensing to define when applicants can use very streamlined applications that transfer control of a license to another entity. The FCC as routinely identifies these:

1. Assignment from an individual or individuals (including partnerships) to a corporation owned or controlled by such individuals or partnerships without any substantial change in their relative interests;
2. Assignment from a corporation to its stockholders without effecting any substantial change in the disposition of their interests;
3. Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;
4. Corporate reorganization which involves no substantial change in the beneficial ownership of the corporation;
5. Assignment or transfer from a corporation to a wholly owned subsidiary thereof and vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without a substantial change in their interests; or
6. Assignment of less than a controlling interest in a partnership.

Non-substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, 13 FCC Rcd 6293, 1998 FCC LEXIS 551. See 47 C.F.R. Section 73.3540 (f).

Need to clarify that:

Simple pro forma transfers do not, as a general rule, invoke the subscriber base change rules.

However, if there are CIC changes associated with the pro forma activity (e.g., one subsidiary is being rolled up into another), then these rules provide a safe harbor.